

spandex, which is important in the case of such products as swimming suits.

#### B. Active Commercial Use

Although the information available when the NPR was published did not establish exactly when REXE was first marketed in the U.S., it is clear that by March 1995 REXE was in use, although not in large quantities, in products covered by the Textile Act.<sup>5</sup> The garments were mostly sportswear, including swim suits, cycling pants and ski pants. Thus, the Commission concludes that the Teijin fiber is in "active commercial use."

#### C. Importance to the Consuming Public

Based on REXE's ability to be used in sportswear for swimming and cycling, the Commission concludes that the fiber may be used by the consuming public in general, and that the granting of this new generic fiber name and definition will not be of interest only to "a small group of knowledgeable professionals, such as purchasing officers for large Government agencies."

#### D. New Generic Fiber Definition

The Commission finds that REXE possesses a distinctive chemical composition not encompassed by any of the Textile Rules' existing generic definitions for manufactured fibers, that its physical properties are important to the public, that the fiber is in active commercial use, and that the granting of a new generic name and definition is important to the consuming public at large. Accordingly, and given that the Commission has received no additional information bearing on this issue beyond that available to it when it published the NPR, the Commission today amends Rule 7 of the Textile Rules by adding the following new definition for Teijin's fiber, which it proposed in the NPR:

A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polymer composed of at least 50% by weight of aliphatic polyether and at least 35% by weight of polyester, as defined in 16 CFR 303.7(c).

#### E. New Generic Name

Although each of the three generic names for REXE that Teijin suggested has merit, the Commission believes that the name "elastoester" is most likely to communicate to consumers that REXE (and other fibers that would fall within the definition's purview) has the

qualities of an elastomer and a polyester, which would tend to make purchasing decisions easier. Therefore, the Commission adopts the generic name "elastoester" for Teijin's fiber.

#### IV. Regulatory Flexibility Act

In the NPR, the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603-604, did not apply to this proposal because the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendment would impose no additional obligations, penalties, or costs. The amendment simply would allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current generic names and definitions, and would impose no additional labeling requirements. To ensure, however, that no substantial economic impact was overlooked, the Commission solicited public comment in the NPR on the effect of the proposed amendment on costs, profits, competitiveness of, and employment in small entities.

No comments were received on this (or any other) issue in response to the NPR. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendment promulgated today will not have a significant economic impact on a substantial number of small entities.

#### V. Paperwork Reduction Act

This proposed amendment does not constitute a "collection of information" under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 (as amended), and its implementing regulations, 5 CFR 1320 *et seq.* (1996). The collection of information imposed by the procedures for establishing generic names, 16 CFR 303.8 (1996), has been submitted to OMB and has been assigned Control Number 3084-0101.

#### List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

#### Text of Amendments

For the reasons set forth in the preamble, 16 CFR Part 303 is amended as follows:

#### PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for Part 303 continues to read as follows:

**Authority:** 15 U.S.C. 70 *et seq.*

2. In § 303.7, paragraph (v) is added, to read as follows:

#### § 303.7 Generic names and definitions for manufactured fibers.

\* \* \* \* \*

(v) *Elastoester*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polymer composed of at least 50% by weight of aliphatic polyether and at least 35% by weight of polyester, as defined in 16 CFR 303.7(c).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97-13607 Filed 5-22-97; 8:45 am]

BILLING CODE 6750-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX76-1-7330; FRL-5828-3]

#### Approval and Promulgation of Extension of Temporary Section 182(f) and Section 182(b) Exemption to the Nitrogen Oxides (NO<sub>x</sub>) Control Requirements for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas; Texas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is approving a petition for an extension of the temporary exemption from the NO<sub>x</sub> control requirements of sections 182(f) and 182(b) of the Clean Air Act (the Act) for the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas from December 31, 1996, to December 31, 1997. The State of Texas submitted the petition to EPA requesting the extension to permit additional time to complete Urban Airshed Modeling (UAM). A temporary NO<sub>x</sub> exemption has been granted by EPA because preliminary photochemical grid modeling showed that reductions in NO<sub>x</sub> would be detrimental to attaining the National Ambient Air Quality Standards (NAAQS) for ozone in these areas. Approval of this petition will extend the temporary exemption which waives the Federal NO<sub>x</sub> requirements for Reasonably Available Control Technology (RACT), New Source Review (NSR), Vehicle Inspection/Maintenance (I/M), and conformity by one year (December 31, 1996, to December 31, 1997) and the

<sup>5</sup> Teijin represented to the Commission that 6,100 yards of REXE were used in the U.S. in 1994, that total production of REXE in 1994 was 67 metric tons, and that estimated 1995 production was 65 metric tons.

implementation date for NO<sub>x</sub> RACT by two years to May 31, 1999.

**EFFECTIVE DATE:** This action is effective as of May 23, 1997.

**ADDRESSES:** Copies of the extension request, public comments and EPA's responses are available for inspection at the following addressees:

Environmental Protection Agency,  
Region 6, Air Planning Section, 445  
Ross Ave, Suite 1200, Mailcode 6PD-  
L, Dallas, TX 75202.

Texas Natural Resource Conservation  
Commission, 12100 Park 35 Circle,  
P.O. Box 13087, Austin, Texas 78711-  
3087.

**FOR FURTHER INFORMATION CONTACT:** Mr. Herbert R. Sherrow, Jr., Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. The telephone number is 214-665-7237.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) submitted to EPA a petition pursuant to section 182(f) which requested that the HGA and BPA nonattainment areas be temporarily exempted by EPA from the NO<sub>x</sub> control requirements of section 182(f) of the Act. The State based its petition on the use of a UAM demonstration showing, pursuant to EPA guidelines, that NO<sub>x</sub> reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from Volatile Organic Compounds (VOC) reductions alone is equal to or greater than the decrease obtained from NO<sub>x</sub> reductions or a combination of VOC and NO<sub>x</sub> reductions. The petition for the temporary exemption was approved by EPA and published at 60 FR 19515 (April 19, 1995).

On March 6, 1996, the State of Texas submitted a petition to EPA which requests that the HGA and BPA nonattainment areas be granted an extension to the temporary exemption from NO<sub>x</sub> control requirements of sections 182(f) and 182(b) of the Act. The State's petition was transmitted by a letter from George W. Bush, Governor, State of Texas, to Jane Saginaw, Regional Administrator of EPA Region 6. The petition was accompanied by the records of public hearing on the petition to satisfy the requirements of section 110. The petition requests an extension of one year, from December 31, 1996, to December 31, 1997, for the exemption and an extension of the NO<sub>x</sub> RACT

compliance date from May 31, 1997, to May 31, 1999. The petition was subjected to public notice on September 5, 1995, and hearing on October 2, 1995. Since the petition for extension went through the State's public participation procedures prior to submittal, EPA considers it to be submitted as a revision to the State Implementation Plan (SIP) and, thus meets the requirements of sections 110 and 182(b).

The State based its petition on needing additional time to complete further UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST) study. The preliminary modeling showed that NO<sub>x</sub> reductions would not contribute to attainment in either area because domain-wide predicted maximum ozone concentrations are lowest when only VOC reductions are modeled. The schedule submitted in the State's original section 182(f) petition was established based on the expected completion of the UAM COAST modeling for attainment demonstration purposes by May 31, 1996. The extension would allow UAM using COAST data to accommodate recent improvements in the modeling process. These improvements will allow the development of better substantiated control programs and minimize the possibility that reliance on earlier preliminary modeling could result in unnecessary or counterproductive control programs, particularly if NO<sub>x</sub> controls are still shown to be detrimental. The petition also includes a description of the improvements in data quantity and quality which will result from the additional COAST data modeling information.

Some of the advantages of taking additional time to conduct the modeling are: (1) the use of the UAM, version V, which is an improved model over the UAM, version IV, previously used, particularly in the reduced use of national defaults; (2) the development of more detailed emissions inventory data; (3) the use of additional monitored data; and (4) the use of more refined meteorological data. The current modeling effort is estimated by the State to be an order of magnitude increase over that for the preliminary modeling, with an attendant increase in the quality-assurance effort required. Because of the large economic impact of the future ozone control strategy on the Texas Gulf Coast Region, both the State and EPA believe that it is essential that the modeling be based on the best available science and the most complete, quality-assured data possible.

Also submitted with the petition was a revision to previously-adopted NO<sub>x</sub>

RACT rules (30 Texas Air Control (TAC) 117) which would extend the compliance dates from May 31, 1997, to May 31, 1999. The State first submitted the NO<sub>x</sub> RACT rules to EPA on December 6, 1993.

A revision to the Texas (Nonattainment) New Source Review rule (30 TAC section 116.150), adopted on October 11, 1995, temporarily extends the suspension of the NO<sub>x</sub> NSR requirements in HGA and BPA through December 31, 1997. This rule revision was submitted to EPA on November 1, 1995, and was not resubmitted with the petition.

On December 13, 1996, EPA proposed to approve the petition for a one-year extension of the temporary exemption of the 182(f) and 182(b) NO<sub>x</sub> requirements for the HGA and BPA areas (61 FR 65504). The proposed rulemaking notice, EPA's Technical Support Document (November 1994) on the proposed action, and supplemental information are contained in the docket and provide a detailed discussion of the TNRCC's submittal, applicable guidance, and EPA's rationale for proposing approval of the State's petition for a one-year extension. Rather than repeating that entire discussion in this document, that discussion is incorporated by reference herein. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

##### **II. Response to Comments**

The following discussion summarizes the comments received regarding the State's petition and/or EPA's proposed rulemaking and presents EPA's responses to these comments. The EPA received 28 letters of support from individuals, industry, local governments, the State Transportation Authority, and the State of Texas. Two adverse comments letters were received from environmental groups. In August 1994, three environmental groups (Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund (NRDC, et al.)) submitted joint adverse comments that addressed EPA's general policy regarding NO<sub>x</sub> exemptions. The commenters requested that these comments be included in the docket for all EPA rulemakings on NO<sub>x</sub> exemptions. The EPA responded to these comments in its earlier final rulemaking approving a temporary section 182(f) NO<sub>x</sub> exemption for the Houston/Galveston and Beaumont/Port Arthur areas. Please refer to 60 FR 19515 (April 19, 1995) for this discussion. The EPA incorporates these responses herein and will not reiterate

our response in this notice. Responses to comments received recently follow.

*Comment:* One commenter indicated that comments had been submitted previously during the comment period for the temporary exemption and requested that those comments be reconsidered. Those comments generally addressed issues concerning SIP submittals, modeling accuracy, transport, and the legal basis for the approval.

*Response:* EPA responded to these comments in the response to comments contained in the final approval of the temporary exemption for HGA and BPA and disagreed with the comments. It is EPA's position that the previous responses remain valid. Please refer to 60 FR at 19516–19521 for a complete discussion of all comments and responses to comments relating to the approval of the temporary exemption.

*Comment:* Both commenters felt that the UAM computer modeling was not sufficiently accurate to allow good predictions of air quality.

*Response:* The EPA disagrees with the comment that the UAM demonstration was insufficient to allow good predictions of air quality. Since a large number of factors influence ozone formation, the EPA agrees that no models, including the UAM, can predict precisely the exact relationship between VOC, NO<sub>x</sub>, and ozone. However, Congress clearly intended that photochemical grid modeling be used for ozone air quality planning purposes in serious and above nonattainment areas. As noted in the EPA's December 1993, guidance, UAM results are acceptable for the purpose of the section 182(f) demonstrations and application of UAM should be consistent with the techniques specified in EPA's "Guidelines on Air Quality Models (Revised)." The UAM modeling utilized by Texas met these criteria.

*Comment:* One commenter stated that since UAM modeling by the TNRCC cannot be replicated as evidence it is inherently flawed.

*Response:* The EPA disagrees with the comment that TNRCC UAM cannot be replicated. Realizing that the UAM is the most complex model released to the States for regulatory use, EPA requires States to submit sufficient information for EPA and public review to ensure that the modeling is technically correct. To facilitate review of modeling by the EPA and the public, making data accessible to the public and EPA is one of seven components required in EPA's *Guidance on the UAM Reporting Requirements for Attainment Demonstrations*. Although the data files are not required as part of the submittal,

the State is still required to make available all UAM files used in the model performance and attainment simulations to EPA and the public at any time. This enables EPA or interested parties to replicate model performance and attainment simulation results if desired. No modeling was conducted by EPA to replicate TNRCC's results since the protocol was consistent with EPA guidance. With the submitted technical documentation summarizing the modeling process, assumptions, and results, and with additional data available from the State, it is EPA's position that TNRCC's UAM modeling can be replicated.

*Comment:* One commenter stated that model performance was believed partly successful in only one episode.

*Response:* The EPA disagrees with this comment. The EPA's UAM guidance recommends that three primary episode days should be simulated, and that primary episode days are to be selected from the predominant meteorological regimes (e.g., three meteorological regimes, each containing one primary day, or two meteorological regimes with at least two primary days from one of those regimes). For the purpose of a temporary NO<sub>x</sub> exemption, Texas did model three episodes. However, only two episodes had an adequate model performance. Although only two of the three episodes modeled achieved adequate performance, this is consistent with EPA guidance. Thus, two episodes are acceptable for the purposes of a temporary exemption since they comprised five days of ozone exceedances and covered several of the predominant meteorological regimes under which ozone exceedances typically occur in the Gulf Coast.

*Comment:* One commenter stated that the inventory was uncertain and questioned the magnitude of error in the inventory.

*Response:* The EPA disagrees with the comment that the emissions inventories are too uncertain to produce acceptable modeling results. In the HGA and BPA modeling exercises, TNRCC followed the EPA procedures for developing episode-specific emission inventories. In addition, the modeling inventories, which were developed for all three episodes, were based on the 1990 base-year emission inventories in accordance with EPA's UAM guidance. The EPA evaluated the State's 1990 base-year emission inventories and a final approval of the inventories was published in the FR on November 8, 1994 (59 FR 55588).

*Comment:* One commenter stated that the proposed submittal of new modeling

was to be conducted with a now-disapproved model.

*Response:* The EPA disagrees that the State used a now-disapproved model. The modeling for the original exemption was conducted with UAM-IV, which is still the EPA-approved regulatory model. However, the state is planning to use UAM-V to conduct its additional modeling. Under EPA's modeling guidelines EPA can approve the use of UAM-V as an acceptable alternative to UAM-IV if the State requests permission to use it and, among other things, the state demonstrates that it performs better than UAM-IV. If these conditions are met, then EPA will grant permission. In addition, UAM-V has been used in regulatory ozone attainment demonstrations for a number of areas. Thus, a decision by EPA to approve the use of UAM-V is not a determination that UAM-IV is unacceptable or somehow "disapproved", nor that conclusions obtained through its use have been invalidated.

*Comment:* One commenter stated that downwind transport from Houston is responsible for air quality problems in other areas of Texas and that UAM is limited in estimating regional ozone air quality.

*Response:* The EPA agrees that Texas' UAM analysis is only designed to estimate air quality over an urban airshed area, such as the Houston/Galveston and Beaumont/Port Arthur areas, and 11 neighboring counties. The analysis is not designed to assess regional impacts, and, therefore, cannot verify whether downwind transport from Houston is affecting air quality in other areas. Other commenters have also argued that waiver of NO<sub>x</sub> control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

As a result of these comments, EPA reevaluated its position on this issue and has revised previously issued guidance. See Memorandum, "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria," dated February 8, 1995, from John Seitz. As described in this memorandum, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be

independent of any action taken by EPA on a NO<sub>x</sub> exemption request under section 182(f). That is, EPA's action to grant or deny a NO<sub>x</sub> exemption request under section 182(f) for any area would not shield that area from EPA's action to require NO<sub>x</sub> emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway or will soon be conducted in many areas for the attainment demonstration SIP revisions required pursuant to section 182(c)(2)(A). Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO<sub>x</sub> emissions upwind of the nonattainment areas. For example, the Northeast Corridor States and the Lake Michigan Ozone Study are considering attainment strategies which may rely, in part, on NO<sub>x</sub> emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as the large scale modeling analyses are being conducted, States have requested exemptions from NO<sub>x</sub> requirements under section 182(f) for certain nonattainment areas in the modeling domains. Some of these nonattainment areas may impact downwind nonattainment areas. The EPA intends to address the transport issue under section 110(a)(2)(D), based on a regional modeling analysis.

Under section 182(f) of the Act, an exemption from NO<sub>x</sub> requirements may be granted for nonattainment areas outside of an ozone transport region if EPA determines that "additional reductions of (NO<sub>x</sub>) would not contribute to attainment of the national ambient air quality standard for ozone in the area."<sup>1</sup> As described in section 4.3 of the December 13, 1993, EPA guidance document, "Guideline for Determining the Applicability of

Nitrogen Oxides Requirements Under Section 182(f)," EPA encourages, but does not require, States/petitioners to consider the impacts on the entire modeling domain since the effects of an attainment strategy may extend beyond a designated nonattainment area. Specifically, the guidance encourages States to consider imposition of the NO<sub>x</sub> requirements if needed to avoid adverse impacts in downwind areas, either intra- or interstate. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State. See section 110(a)(2)(D)(i)(I) of the Act.

In contrast, section 4.4 of the December 16, 1993, guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> exemption would interfere with attainment or maintenance in downwind areas. The guidance further explains that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts. Consistent with section 4.3 of the guidance, the EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, has revised section 4.4 of the December 16, 1993, guidance document. Thus, if there is evidence that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that problem will be separately addressed by EPA in a section 110(a)(2)(D) action. However, there has been no such determination made with respect to the HGA/BPA areas at issue here.

The State of Texas is being included in one of the new modeling analyses referred to above that is being conducted by EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among 37 States and EPA. The OTAG process will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG process is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard throughout the eastern United States. Some States have committed to submit plans (SIP revisions), upon completion of the OTAG process, that demonstrate attainment of the ozone standard

through local, regional, and national emission controls.

As noted in a prior EPA rulemaking dated November 28, 1994 (59 FR 60709), all NO<sub>x</sub> waivers are approved on a contingent basis. The waiver applies only so long as air quality analyses, such as from additional ozone modeling, in an exempted area continue to show NO<sub>x</sub> reductions are detrimental or would not contribute to attainment of the ozone NAAQS. Therefore, if future air quality analysis shows that NO<sub>x</sub> reductions are beneficial in reducing ozone, the State will have to implement necessary NO<sub>x</sub> controls.

*Comment:* One commenter objected to the extension based on concerns for adverse health effects that may be caused by NO<sub>x</sub> concentrations in Houston.

*Response:* There is currently a national health standard for NO<sub>2</sub> and all portions of the Houston/Galveston and Beaumont/Port Arthur areas meet that standard. In addition, the modeling projected growth to 1999 and still demonstrated that NO<sub>2</sub> reductions would not contribute to attaining the ozone NAAQS.

*Comment:* One commenter stated that there are disproportionate population impacts of ozone air pollution in the Houston area.

*Response:* The EPA is vitally concerned that good air quality is available to all residents of an area. Air quality standards are set on an area-wide basis to attempt to ensure that no one segment of the population is treated disproportionately. Concerning the specific subject of this rulemaking, NO<sub>x</sub> contributions as an ozone precursor, UAM has shown that NO<sub>x</sub> controls would not improve (and, in fact, may worsen) the ozone problem in the Houston area and thus, would not be beneficial to the residents of the Houston area. Therefore, the available evidence indicates that approving the extension will benefit the residents of the area.

*Comment:* One commenter stated that there are parallels between the Louisiana industrial corridor and the Houston/Galveston industrial corridor regarding toxics releases, environmental equity, and NO<sub>x</sub> emissions.

*Response:* The EPA has conducted a study of the toxics impacts in the lower Mississippi River industrial corridor (*Toxics Release Inventory & Emission Reductions 1987-1990 in the Lower Mississippi River Industrial Corridor*, U.S. EPA, May 14, 1993). The conclusions from that study did not identify NO<sub>x</sub> as a problem in the lower Mississippi River industrial corridor.

<sup>1</sup> There are three NO<sub>x</sub> exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: the "contribute to attainment" test described above, and the "net air quality benefits" test. The EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO<sub>x</sub> reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption. Consequently, as stated in section 1.4 of the December 16, 1993, EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

Moreover, the Act provides in section 182(f) for NO<sub>x</sub> to be addressed independently as an ozone precursor pollutant for exemption purposes. Therefore, since section 182(f) does not require toxics impacts analysis, it would be inappropriate to consider the effect of toxics emissions for NO<sub>x</sub> exemption purposes.

In addition, the State of Louisiana submitted a petition and a SIP to EPA requesting a section 182(f) and 182(b) NO<sub>x</sub> exemption for the Baton Rouge nonattainment area. The requests were based on UAM modeling which satisfied all of EPA's requirements. The results of the modeling indicated that NO<sub>x</sub> controls would be a disbenefit to area residents since they would cause an increase in ozone levels. The requests were approved at 61 FR 2438, January 26, 1996, and 61 FR 7218, February 27, 1996.

Since there are no other ozone nonattainment areas in the lower Mississippi River industrial corridor and the Baton Rouge area has received a NO<sub>x</sub> exemption, EPA does not agree with the comment comparing Texas' NO<sub>x</sub> emissions unfavorably to those in the Lower Mississippi River industrial corridor.

The environmental equity issues were discussed in the previous response to comments.

### III. Effective Date

This rulemaking is effective as of May 23, 1997. The Administrative Procedure Act 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after the publication of the rule if the rule "relieves a restriction." Since the approval of the extension to the section 182(f) and 182(b) exemptions for the HGA and BPA areas is a substantive rule that relieves the restrictions associated with the Act title I requirements to control NO<sub>x</sub> emissions, the NO<sub>x</sub> exemption extension approval may be made effective upon publication in the **Federal Register**.

### IV. Final Action

The EPA is taking final action to approve the petition submitted by the State of Texas for an extension of the temporary NO<sub>x</sub> exemption for the HGA and BPA ozone nonattainment areas from December 31, 1996, to December 31, 1997. The extension will expire on December 31, 1997, without further notice from EPA. The extension applies to NO<sub>x</sub> RACT, NSR, and certain I/M, general and transportation conformity NO<sub>x</sub> requirements.

The State previously adopted and submitted to EPA complete NO<sub>x</sub> RACT,

NSR, I/M, and conformity rules. Along with the exemption extension submittal, NO<sub>x</sub> RACT rules providing for extending the current implementation date, were resubmitted. During the extension of the temporary exemption period, EPA will not act upon the State's NO<sub>x</sub> RACT rules. The EPA plans to act upon the State's NSR, I/M, and general and transportation conformity NO<sub>x</sub> submissions in separate rulemaking actions because those submissions are contained in broader rules that also control VOC emissions.

Upon the expiration of the extension to the temporary exemption on December 31, 1997, the State is required to either: (1) Have received an additional extension to the temporary NO<sub>x</sub> exemption or a contingent exemption from EPA prior to that time; or (2) begin implementing the State's NO<sub>x</sub> RACT, NSR, I/M, general and transportation conformity requirements, with NO<sub>x</sub> RACT compliance required as expeditiously as practicable but no later than May 31, 1999. The EPA will begin rulemaking on the NO<sub>x</sub> RACT SIP upon the expiration of the extension to the temporary exemption if the State has not received an additional temporary extension or a contingent exemption by that time.

Since the original temporary exemption and this one-year extension are based on preliminary modeling, and additional time is being granted to allow for conducting modeling with improved data from the COAST study, any future petition for a further NO<sub>x</sub> extension or new exemption, to be technically valid, must be accompanied by UAM modeling based on the COAST data and be submitted in time for EPA to take action prior to the expiration of the temporary exemption. Preliminary modeling cannot be used as a basis for any further extensions or a new exemption. In addition, a further two-year extension of the NO<sub>x</sub> RACT compliance date based on the preliminary modeling would not be approvable since it would extend the date beyond 1999, the last year included in the preliminary modeling.

Other specific requirements that would reapply upon expiration are: (1) Any NSR permits that had not been deemed complete prior to January 1, 1998, must comply with the NO<sub>x</sub> NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memo dated September 3, 1992, from John Seitz, Director, EPA's Office of Air Quality Planning and Standards; (2) any conformity determination (for either a new or revised transportation plan and Transportation Improvement Program)

made after January 1, 1998, must comply with the NO<sub>x</sub> conformity requirements; and (3) any I/M vehicle inspection made after January 1, 1998, must comply with the I/M NO<sub>x</sub> requirements.

### V. Regulatory Action

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### VI Administrative Requirements

#### A. Executive Order (E.O.) 12866

This action has been classified as a Table 1 action for signature by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 14, 1997.

**Carol M. Browner,**  
*Administrator.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart SS—Texas**

2. Section 52.2308 is amended by adding paragraph (e) to read as follows:

**§ 52.2308 Area-wide nitrogen oxides (NO<sub>x</sub>) exemptions.**

\* \* \* \* \*

(e) The TNRCC submitted to EPA on March 6, 1996, a petition requesting that the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas be granted an extension to a previously-granted temporary exemption from the NO<sub>x</sub> control requirements of sections 182(f) and 182(b) of the Clean Air Act. The temporary exemption was granted on April 19, 1995. The current petition is based on the need for more time to complete UAM to confirm the need for, and the extent of, NO<sub>x</sub> controls required. On May 23, 1997, EPA approved the State's request for an extension to the temporary exemption. The temporary extension automatically expires on December 31, 1997, without further notice from EPA. Upon expiration of the extension, the requirements pertaining to NO<sub>x</sub> RACT, NSR, I/M, general and transportation conformity will become applicable, except that the NO<sub>x</sub> RACT compliance date shall be implemented as expeditiously as practicable, but no later than May 31, 1999, unless the State has received a contingent NO<sub>x</sub> exemption from the EPA prior to that time.

[FR Doc. 97-13655 Filed 5-22-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[IN53-2; FRL-5829-5]

**40 CFR Part 52****Approval and Promulgation of Implementation Plans; Indiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; withdrawal.

**SUMMARY:** On April 3, 1997 (62 FR 15844), the EPA approved Indiana's June 26, 1995, submittal of a Rate-Of-Progress (ROP) plan to reduce Volatile Organic Compounds (VOC) emissions in Lake and Porter Counties by 15 percent (%) by November 15, 1996, a contingency plan to reduce VOC emissions by an additional 3% beyond the ROP plan, and an Indiana Agreed Order requiring VOC emission controls on Keil Chemical Division, Ferro Corporation, as revisions to the Indiana State Implementation Plan (SIP). The EPA is withdrawing this final rule due to adverse comments received on May 5, 1997, from Ferro Corporation. In a subsequent final rule EPA will summarize and respond to the comments received and announce final rulemaking action on this requested Indiana SIP revision.

**EFFECTIVE DATE:** May 23, 1997.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mark J. Palermo, Environmental Protection Specialist, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-6082.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Ozone.

Dated: May 8, 1997.

**David A. Ullrich,**  
*Acting Regional Administrator.*

Therefore the amendments to 40 CFR part 52 which added §§ 10452.770(c)(112) 52. 777(k) and 52.777(l) are withdrawn.

[FR Doc. 97-13651 Filed 5-22-97; 8:45 am]

BILLING CODE 6560-50-P